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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

QUENTIN VILLANUEVA, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B283874 (Los Angeles County Super. Ct. No. BS163410)

APPEAL from judgment and order of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Affirmed.

Seki, Nishimura & Watase, for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, Plaul L. Winnemore, Deputy City Attorney, for Defendants and Respondents.

Plaintiff and appellant Quentin Villanueva appeals from a judgment denying his petition for peremptory writ of mandate following an administrative appeal where Villanueva challenged misconduct findings against him by respondents City of Los Angeles and Charles Beck. On appeal, Villanueva contends he committed no misconduct when he detained Leonard Pittman, because (1) he had a reasonable suspicion that Pittman was absconding from parole; (2) Pittman was on probation with search conditions; and (3) Pittman presented a sufficient threat of danger and fleeing the scene. We conclude substantial evidence supports the determination that Villanueva did not have an objectively reasonable belief that Pittman was on parole or probation when he detained Pittman. The bare fact that Pittman was on probation with search conditions, without evidence of the conditions, did not mean he was subject to a suspicionless detention. Although waived, there was no evidence that Pittman posed a threat of danger or flight. We affirm the judgment.

FACTS AND PROCEDURAL HISTORY

Investigation

In 2013, while Officer Quentin Villanueva was assigned to the Parole Compliance Unit (PCU), he reviewed a list of subjects to contact for parole compliance, including Pittman. In August 2013, he arrested Leonard Pittman for a

parolee at large warrant. Pittman refused to answer any of Villanueva's questions when he was arrested, and he made physical attempts to flee the scene. After the August 2013 parolee at large arrest, Pittman's probation officer told Villanueva that Pittman did not normally comply with parole conditions.

In December 2014, Villanueva was assigned to patrol and was no longer with the PCU. Villanueva and his partner Robert Bechtol were on routine patrol on December 25, 2014, when Villanueva saw Pittman standing on the sidewalk with a woman and another man (who were subsequently identified as Pittman's cousins). Villanueva recognized Pittman from the 2013 arrest. He told Bechtol that he recognized Pittman. He believed Pittman was probably still on parole, so he pulled up the police car and asked Pittman if he was still on parole. Pittman refused to answer. Following a brief discussion amongst themselves, the officers decided to speak to Pittman "to determine his current parole status." The officers got out of their car and asked Pittman again if he was on parole or probation. Pittman refused to answer, so Villanueva told Pittman's cousins to step back. Villanueva handcuffed Pittman and searched his pockets to retrieve his identification. The officers checked Pittman's status on their mobile digital computer, which revealed Pittman was on probation with search conditions. Pittman was detained for 10 to 20 minutes and was released when the officers determined he had no outstanding warrants.

On December 27, 2014, Pittman lodged a formal complaint with the Los Angeles Police Department alleging that he was illegally detained. The Department interviewed Villanueva and one of Pittman's cousins.[1] The Department also interviewed Bechtol, who explained that they stopped the car to ask Pittman his name and birthdate. During the encounter, Bechtol was more concerned about the male cousin as a safety risk to the officers than about Pittman.

Departmental Policy and Charges

Departmental policy prohibits officers from detaining individuals without cause or justification. As a result of its investigation, the Department charged Villanueva with detaining Pittman without cause [count 1].[2]

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[1] The Department could not locate Pittman's male cousin.

[2] The Department also charged Villanueva in count 2 for failing to activate his digital in-car video system upon initiation of a pedestrian stop. However, the Department later conceded at the administrative hearing that, at most, there was a short delay in activating the video. The hearing officer found count 2 to be unfounded at the conclusion of the administrative appeal, and the Chief of Police adopted that finding. Villaneuva does not challenge the finding on count 2, so we focus our inquiry only on count 1.

Administrative Appeal

Villanueva sought an administrative appeal to reclassify the adjudication as to count 1 from sustained to unfounded. During the hearing, Villanueva discussed his familiarity with Pittman from August 2013 when Villanueva had been assigned to the PCU. Villanueva estimated parole lasts "about three to five years," but conceded it could be shorter or longer.

At the time of the December 25, 2014 incident, Villanueva saw Pittman standing in the same location where he arrested Pittman in 2013. When Villanueva asked if Pittman was still on parole, Pittman replied, "'Fuck you, I don't need to tell you anything.'" The officers agreed to detain Pittman to "investigate [Pittman's] parole status and whether or not he was absconding." When Villanueva approached and requested information, Pittman did not attempt to run away, did not take a fighting stance, and stated "he thought he wasn't on anything." Pittman was "being noncompliant, so [Villanueva] reasonably believed that he's still on parole, and possibly absconding from parole. So we go -- went ahead and detained him." Villanueva acknowledged Pittman's noncompliance was verbal hostility, but "he wasn't like physically hostile." After putting Pittman in handcuffs and retrieving his identification from his pocket, Villanueva looked up Pittman's status, which revealed a reduction from parole to formal probation with search conditions.

Villanueva had been trained to perform detentions at the police academy and was familiar with the One Minute Brief, a legal resource used by officers on police work. The One Minute Brief dated May 20, 2008, states that "officers must have prior knowledge that a suspect is on . . . parole/probation search terms before searching . . . but need not be correct as to which one the suspect is on, probation, or parole."[3] The One Minute Brief also states that "[n]ot all probationers are [on search and seizure conditions]. . . . Before conducting a search of a probationer, officers should establish that the probationer is subject to suspicionless search and seizure."

Following testimony, the hearing officer issued a decision finding sufficient evidence to support the recommended finding and penalty of training for count 1. The second demand for Pittman's parole status, done after the officers got out of their car, constituted a detention. Without articulable facts suggesting Pittman was on parole

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[3] The One Minute Brief cites *People v. Sanders* (2003) 31 Cal.4th 318, at page 335 ["we hold that an otherwise unlawful search of the residence of an adult parolee may not be justified by the circumstance that the suspect was subject to a search condition of which the law enforcement officers were unaware when the search was conducted"], and *People v. Hill* (2004) 118 Cal.App.4th 1344, at page 1351 [officer's search was reasonable because he was misinformed defendant was on parole when he was on probation with search conditions that were not "arbitrary or harassing"].

or might be engaged in criminal activity, the detention was unlawful. Rather, the detention was to determine Pittman's parole status, which was ascertained after the detention.

The Chief of Police adopted in whole the recommendation of the hearing officer.

Petition for Peremptory Writ of Mandate

Villanueva filed a petition in the trial court for peremptory writ of mandate pursuant to Code of Civil Procedure section 1094.5 seeking to set aside the decision of the hearing officer. Villanueva provided three arguments in support of his petition: (1) Pittman's probation status subjected him to a search without cause; (2) Villanueva believed Pittman was subject to a search condition pursuant to *People v. Douglas* (2015) 240 Cal.App.4th 855 (*Douglas*); and (3) Villanueva was justified in detaining Pittman based on reasonable suspicion that Pittman was absconding parole. The City of Los Angeles and the Chief of Police filed an opposition, and Villanueva filed a reply.

The Hearing and the Trial Court's Ruling

During the hearing on the peremptory writ of mandate, the court stated that it did not think it is "reasonable suspicion when you ask the arrestee, 'are you on parole,' and he says something . . . that's hostile, certainly to be expected every day in the job of [a] police officer." The court did not

draw an inference from the similarity in behavior between Pittman's 2013 arrest and the 2014 detention. What a potential arrestee does when the officer arrives is critical to the determination of reasonable suspicion, but an ordinary citizen has no duty to cooperate with the police if they did not do anything wrong.

The trial court subsequently denied the petition for peremptory writ of mandate, finding the weight of the evidence supported the finding that Villanueva unlawfully detained Pittman. The court contrasted the facts of this case from those in *Douglas*, noting that Villanueva "detained Pittman because he sought to determine whether Pittman was violating parole. [Villanueva] had no objective or subjective knowledge of Pittman's parole status, testifying only that he believed Pittman to be on parole . . . more than sixteen months before." "[T]he whole purpose of the detention was to determine Pittman's parole status," so Villanueva had no knowledge to provide the basis for a lawful detention.

Villanueva filed a timely notice of appeal.

DISCUSSION

Standard of Review

"'The trial court applies its independent judgment to the department's administrative decision, but with a strong presumption the department acted properly. (Code Civ.

Proc., § 1094.5, subd. (c); *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 812, 817.) We review the trial court's factual findings for substantial evidence. [Citation.] We independently review the court's legal findings.' (*Chrisman v. City of Los Angeles* (2007) 155 Cal.App.4th 29, 33 (*Chrisman*).)" (*Crawford v. City of Los Angeles* (2009) 175 Cal.App.4th 249, 253; accord, *Douglas*, *supra*, 240 Cal.App.4th at pp. 869–870; *People v. Lopez* (2004) 119 Cal.App.4th 132, 135 (*Lopez*) ["On review, we defer to the trial court's express and implied findings which are supported by substantial evidence and determine whether, on the facts so found, the detention was reasonable"].)

"Substantial evidence is evidence that a rational trier of fact could find to be reasonable, credible, and of solid value. We view the evidence in the light most favorable to the judgment and accept as true all evidence tending to support the judgment, including all facts that reasonably can be deduced from the evidence. The evidence is sufficient to support a factual finding only if an examination of the entire record viewed in this light discloses substantial evidence to support the finding. [Citations.]" (*Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99.) "'[W]e must also resolve all conflicts and indulge all reasonable inferences in favor of the party who prevailed in the trial court.'" (*Wences v. City of Los Angeles* (2009) 177 Cal.App.4th 305, 318.)

No Objectively Reasonable Belief

Under the circumstances in this case, substantial evidence supports the trial court's factual findings, and on the facts so found, the detention was unreasonable. The parties do not dispute that Villanueva effected a detention after he got out of the police car and handcuffed Pittman. (See *People v. Linn* (2014) 241 Cal.App.4th 46, 58–59.) Their primary dispute, however, is whether the detention was reasonable.

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (U.S. Const., 4th Amend.) "There are two different bases for detaining an individual short of having probable cause to arrest: (1) reasonable suspicion to believe the individual is involved in a crime (*Terry v. Ohio* (1968) 392 U.S. 1, 30–31 (*Terry*)); and (2) advance knowledge that the individual is on searchable probation or parole. [Citations.]" (*Douglas*, *supra*, 240 Cal.App.4th at p. 860; *People v. Turner* (2013) 219 Cal.App.4th 151, 160, citing *United States v. Arvizu* (2002) 534 U.S. 266, 273; *United*

States v. Cortez (1981) 449 U.S. 411, 417; *People v. Souza* (1994) 9 Cal.4th 224, 239 (*Souza*).)[4]

Detentions of suspected probationers or parolees short of probable cause to believe they are engaged in criminal activity are reasonable when, "judged against an objective standard, the facts available to [the officer] at the moment he detained [the subject] would have warranted an officer of reasonable caution to believe" the subject was on probation or parole. (*Douglas*, *supra*, 240 Cal.App.4th at p. 868.) In reviewing a parole or probation detention, "'we consider the totality of the circumstances known to the officer and balance the intrusion of the search upon the suspect's privacy with the need for such intrusion to promote legitimate governmental interests.' [Citations.]" (*Id.* at p. 872.)

Douglas is instructive. After examining warrantless search cases, the court found "[t]he formulation most faithful

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[4] Under the first exception, the detaining officer must "point to specific articulable facts" that provide objective manifestation that the person detained may be involved in criminal activity. (*Souza*, *supra*, 9 Cal.4th at p. 231.) Villanueva does not contend Pittman was engaged in criminal activity outside of absconding parole. Notwithstanding his own concession that he believed Pittman's parole violation was merely a violation, Villanueva references nothing in the record to support how Pittman was committing the violation. He cites no authority below or on appeal to establish criminal activity through absconding parole. We are aware of none.

to the analogous precedents is the 'objectively reasonable belief' standard: the officer's belief in the subject's status as a probationer [or] parolee . . . must have been objectively reasonable in the totality of the circumstances." (*Douglas*, *supra*, 240 Cal.App.4th at p. 865.) The *Douglas* court found that under the circumstances, the officer held an objectively reasonable belief the defendant was on post-release community supervision (PRCS) subject to mandatory search conditions at the time he detained the defendant. (*Id.* at p. 870.) Those circumstances included the following: the officer was part of a special investigation division parole unit responsible for monitoring individuals on probation or parole; a regular part of the officer's job was to regularly monitor a list of persons on probation and parole; the officer had seen defendant on a list of active probationers within the preceding two months; the officer had arrested defendant on a weapons charge two years earlier, and given the charges knew the usual length of PRCS, enabling the officer to roughly calculate that defendant would still be on PRCS; and prior to detention, defendant engaged in furtive action by initially pulling away from the curb in his car when first contacted by the officer. (*Id.* at pp. 857–858, 870–872.)

Villanueva contends that, just like the officer in *Douglas*, the totality of the circumstances surrounding his detention of Pittman support a finding that it was objectively reasonable. To the contrary, *Douglas* is distinguishable, and the circumstances here show Villanueva had no objectively reasonable basis for the detention. Unlike the officer in

Douglas, Villanueva was not part of a special unit with duties to keep updated on, and monitor, probationers and parolees. Despite having had the prior interaction with Pittman, Villanueva did not have sufficient facts from which he could have made, or did make reasoned calculations to conclude that Pittman was on parole, because there is no evidence that Villanueva knew when Pittman's prior parole began or when Pittman went to prison.[5] (See *Douglas*, *supra*, 240 Cal.App.4th at p. 870, fn. 9.) Nor was Villanueva independently apprised of Pittman's parole status shortly before the detention through routine reports listing probationers and parolees, which the *Douglas* court found to be a "significant ingredient" in its analysis. (See *id.* at p. 871.) Finally, there is no evidence that Pittman presented a concern for safety or flight leading up to or attendant to the detention. Villanueva recognized Pittman from a non-violent parole compliance check. Villanueva's partner was more concerned about Pittman's male cousin than he was with Pittman, perhaps because Pittman never made furtive

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[5] The maximum length of probation in a misdemeanor case is usually three years, but may be enforced for the maximum time for which the sentence of imprisonment might be pronounced. (Pen. Code, § 1203a.) The maximum length of probation in a felony case is either five years or the maximum possible term of the sentence, whichever is longer. (*Id.*, § 1203.1, subd. (a).) The record does not shed light on whether Pittman's narcotics charge was a felony or misdemeanor.

movements or attempts to physically flee the scene. The facts as a matter of law do not give rise to an objectively reasonable belief (or reasonable suspicion) that the officer's safety was at risk or that Pittman would flee the scene.

Based on the foregoing, substantial evidence supports the finding that Villanueva did not have a reasonable belief Pittman was on parole, and that Villanueva detained Pittman in order to ascertain Pittman's parole status. Under *Douglas*, these findings render the detention unreasonable and foreclose Villanueva's separate contention on appeal that the trial court committed error by excluding from its analysis whether Villanueva had reasonable suspicion Pittman was absconding parole. An officer cannot harbor a reasonable suspicion that a person is violating parole if the officer does not reasonably believe that person is on parole.

Probation Conditions

Villanueva alternatively contends that Pittman's probation status subjected him to a warrantless search condition, which presumably permitted Villanueva to detain Pittman without cause. The argument ignores the legal import of *Douglas*, and it presents two distinct issues.

First, Villanueva provides no legal authority to support the proposition that probationers like Pittman are de facto

subject to warrantless detentions,[6] or that they must cooperate with the police by providing a probation status or birthday to verify their status. (Cal. Rules of Court, Rule 8.204(a)(1)(B); *City of San Maria v. Adam* (2012) 211 Cal.App.4th 266, 287 ["we may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions he wants us to adopt"]; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830 ["We are not bound to develop appellants' arguments for them"].)

Second, the record does not contain a statement of the terms and conditions of Pittman's probation to determine if he consented in advance to suspicionless detentions. (See Pen. Code, § 1203.12; see *Bravo*, *supra*, 43 Cal.3d at p. 606 ["Law enforcement officers who rely on search conditions in probation orders, the probationer himself, and other judges who may be called upon to determine the lawfulness of a

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[6] Villanueva cites *People v. Bravo* (1987) 43 Cal.3d 600 (*Bravo*) for the proposition that any "person who voluntarily accepts probation subject to a condition affirmatively agrees that they are subject to a detention and search without a warrant." However, the Supreme Court did not analyze the legality of a suspicionless detentions in light of probation search conditions. (See *id.* at p. 611 ["We hold only that a search condition of probation that permits a search without a warrant also permits a search without 'reasonable cause,' as the former includes the latter."].)

search, must be able to determine the scope of the condition by reference to the probation order"].) Because we are left to speculate whether the terms of Pittman's probation included consent to suspicionless detentions, Villanueva has not shown reversible error by an adequate record. (*Lincoln Fountain Villas Homeowners Assn. v. State Farm Fire & Casualty Ins. Co.* (2006) 136 Cal.App.4th 999, 1004, fn. 1.)

Risk of Safety and Flight

Finally, Villanueva contends Pittman's ongoing hostile conduct and refusal to cooperate provided sufficient grounds for the detention. Villanueva did not make this argument below. We deem the contention waived. (*Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1519 ["theories not raised in trial court generally may not be asserted for the first time on appeal. . . . 'Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider.'"].)

Furthermore, there is no evidence to support Villanueva's theory that Pittman posed a risk of safety or was physically fleeing the scene. (See *People v. Glaser* (1995) 11 Cal.4th 354, 365, 368 [detention incident to a residential search for narcotics held reasonable by the need to determine what connection defendant had to the premises, and by the related need to ensure officer safety and security at the site of a search for narcotics]; *Souza*, *supra*, 9 Cal.4th

at p. 234 ["There is an appreciable difference between declining to answer a police officer's questions during a street encounter and fleeing at the first sight of a uniformed police officer"]; *Lopez*, *supra*, 119 Cal.App.4th at p. 136 [appellant "was belligerent, refused to give his name, refused to keep his hands visible, [] refused to submit to a patdown," and 'popped back up'" after being ordered to sit down].)

DISPOSITION

The judgment is affirmed. Respondents City of Los Angeles and Charles Beck are awarded their costs on appeal.

MOOR, J.

We concur:

BAKER, Acting P.J.

SEIGLE, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.